

1 JOHN B. SULLIVAN (State Bar No. 96742)
jbs@severson.com
2 JAN T. CHILTON (State Bar No. 47582)
jtc@severson.com
3 ANDREA H. HENNINGSEN (State Bar No. 167361)
ahh@severson.com
4 SEVERSON & WERSON
A Professional Corporation
5 One Embarcadero Center, Suite 2600
San Francisco, CA 94111
6 Telephone: (415) 398-3344
Facsimile: (415) 956-0439
7

Attorneys for Defendant
8 SEATTLE MORTGAGE COMPANY
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 MARY B. LABRADOR, individually and on
behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 SEATTLE MORTGAGE COMPANY,

17 Defendant.
18

Case No.: CV-08-2270 MEJ

**APPENDIX OF OTHER AUTHORITIES
IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS COMPLAINT**

Hearing: June 19, 2008
Time: 10:00 a.m.
Courtroom: B, 15th Floor
Judge: Maria-Elena James

19 Seattle Mortgage Company presents this appendix of other authorities that it has referenced
20 in its memorandum in support of its motion to dismiss complaint:

- 21 1. HUD Handbook 4235.1 (rev. 1), Section 6-13
- 22 2. HUD, Mortgagee Letter 2004-25
- 23 3. HUD, Mortgagee Letter 00-10
- 24 4. Report Relative to Assembly Bill No. 292 (Sept. 23, 1970), 4 Cal. Assembly Daily
25 J. (1970 Reg. Sess.) p. 8464
26
27
28

1 DATED: May 6, 2008

SEVERSON & WERSON
A Professional Corporation

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3 By: _____/s/_____
4 Andrea H. Henningsen

5 Attorneys for Defendant
6 SEATTLE MORTGAGE COMPANY

7 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
8 “conformed” signature (/s/) within this e-filed document.
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[Prev Hit][Next Hit]Home Equity Conversion Mortgages

Directive Number: 4235.1

4235.1 REV-1

CHAPTER 6. CLOSING AND ENDORSEMENT

6-1 PURPOSE. This chapter outlines the procedures for closing and submitting a loan for endorsement. The procedures for the local HUD office to follow in endorsing a loan are also explained. Refer to HUD Handbook 4165.1 for further standard closing and endorsement procedures.

6-2 GENERAL INSTRUCTIONS. HUD will not provide mortgages and notes for use with the HECM program. Mortgagees MUST use the model mortgage forms (Appendices 1 and 4), and the model note forms (Appendices 2, 3, 5, and 6), and the accompanying instructions and footnotes, with only such adaptation as may be necessary to conform to State or local requirements. Using the model mortgage and forms provided, a lender must develop or procure mortgages and notes which comply in form and substance with both this chapter and all applicable State and local requirements for a recordable and enforceable mortgage and an enforceable note. This chapter incorporates all previous mortgagee letters concerning mortgage and note forms. It may be modified by subsequent mortgagee letters. A lender must be careful to comply with the most recent instructions.

A.This chapter does not supersede HUD regulations. It supersedes anything contained in other HUD administrative issuances, such as handbooks, notices or mortgagee letters, that prescribes the form and content of a mortgage or note, and conflicts directly with these requirements. Some of the mortgage or note language required or permitted by this chapter may result in a borrower granting broad rights to a lender while the exercise of those rights is limited by HUD regulations or administrative issuances. These requirements do not supersede any such limitations on borrowers, and a borrower's rights under the mortgage and note may be exercised only in a manner consistent with all relevant HUD requirements.

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(6-2)

B.Lenders should not seek advance approval of forms from either HUD Headquarters or local HUD offices. Lenders are responsible for determining that the mortgage and note comply with all

requirements. However, questions regarding the appropriate interpretation of Sections 6-2, 6-3, 6-4, and 6-6 may be directed to:

Department of Housing and Urban Development
Assistant General Counsel for [\[Prev Hit\]](#)[\[Next Hit\]](#) **Home** Mortgages
Room 9258
451 7th Street, S.W.
Washington, DC 20410

Any requests for changes to the requirements of this chapter should be directed to the same address. HUD does not expect to grant case-by-case exceptions.

C.The term "mortgage" as used in this chapter includes any form of security instrument commonly used in a jurisdiction in connection with loans secured by residential property, such as a deed of trust or security deed. The term "note" as used in this chapter includes any form of credit instrument commonly used in a jurisdiction to evidence such loans.

D.HUD does not require that a rider be attached to a mortgage for an adjustable rate HECM. In most States, there is no clear need to record an extra rider to explain the adjustable rate features of the mortgage. The description of the note that is given on the first page of the model mortgage forms should be a sufficient description of the debt for recordation purposes, so lenders should use the model mortgage forms with no special adaptation for adjustable rate loans, if such mortgages would be fully enforceable under State or local law. However, HUD does allow the lender to add language to reflect the adjustable rate nature of the mortgage, if necessary to comply with State or local law. One or more of the following adaptations may be made to the form:

1)Change the title to "Adjustable Rate [\[Prev Hit\]](#)[\[Next Hit\]](#) **Home Equity Conversi**

2)Change the first use of the word "note" to "adjustable rate note."

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(6-2D.)

3)Change the first use of the word "interest" on the first page to "interest at a rate subject to adjustment (interest)."

4)Add additional language, either to Paragraph 1, or as an additional numbered paragraph at the end of the mortgage, which references, describes or summarizes the adjustable rate feature of the note to the extent required by the lender, or by State or local law.

6-3FORMAT. A mortgage, note, and loan agreement may include the lender's business name and/or logotype at the top of the form. Although layout and format are within the discretion of lenders where not specified in this chapter; size, style, typeface and print should be similar to the mortgages and notes approved by the Federal National Mortgage

Association (Fannie Mae) and the Federal [Prev Hit] [Next Hit] Home Loan Mortgage Corporation (FHLMC). The Department recommends that lenders include the last revision date on each form in order to clarify the versions being distributed.

6-4STATE LAWS. The mortgage instructions and the note footnotes in Appendices 1-6 identify a number of specific adaptations of the model forms that are needed to comply with State laws. Other State laws may require further adaptation. Lenders aware of such laws should bring them to the Department's attention so that the requirements may be updated or the local HUD office may issue a Circular Letter reflecting additional State law requirements. The validity and enforceability of the mortgage and note will depend on compliance with State law even if such law is not reflected in this handbook. For this reason, HUD emphasizes the need for a lender to use mortgages and notes that are in compliance with State law.

6-5LOCAL HUD OFFICE AUTHORITY. Local HUD offices have authority to impose additional requirements regarding mortgage and note provisions for consistency with State laws appropriate to their jurisdictions, and to advise lenders of any such requirements through a Circular Letter.

6-6PREPARATION OF SECURITY INSTRUMENTS. The lender must prepare the following legal instruments (see appendices at the end of this Handbook for mandatory model forms), as needed for a particular case:

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(6-6)

A.Mortgage and note. The lender must provide a copy of the first mortgage and the appropriate first note (fixed or adjustable rate) for review by the borrower during the application process (see Paragraph 4-7), but not later than when the borrower signs the URLA.

B.Second mortgage and note. The lender must complete a second mortgage and second note (fixed or adjustable rate) to secure any payments made by HUD to the borrower. A copy of the second mortgage and second note need not be provided for review by the borrower during the application process, however, their relationship to the first mortgage and first note should be fully explained. The second mortgage and second note secure any mortgage payments which might be made by HUD to the borrower in the event that the lender fails to make the payments under the loan Agreement.

HUD policy does not require a maximum mortgage amount to be stated in the mortgage. Where State law requires the mortgage to reflect a maximum mortgage amount, the lender must use an amount that is equal to 150% of the maximum claim amount. This amount is required because the loan payments are secured not only by the current value of the house but also by any possible appreciation in value. This amount is intended to protect the borrower in the later years of the mortgage. When a maximum mortgage amount is stated in the mortgage, the lender is not secured for payments to the borrower beyond the stated amount. If the mortgage balance

reaches the maximum mortgage amount, payments to the borrower would cease or the borrower would have to try to extend the mortgage which may not be possible if the property value has declined or if other liens were placed on the property. Both of these risks are greatly reduced when the maximum mortgage amount is a higher amount.

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(6-6)

C.Loan Agreement. A copy of the Loan Agreement (Appendix 7) must be provided for review by the borrower during the application process. Three copies of the Loan Agreement must be executed at closing by the borrower and the lender. The copies of the agreement will be signed by HUD when the mortgage is endorsed for insurance. This agreement outlines the process of disbursing the mortgage proceeds, the obligations and rights of the lender, and the rights and limitations on the borrower. A Repair Rider (Appendix 8), containing provisions covering the completion of any required repairs, must accompany the agreement, if applicable.

D.Shared Appreciation Rider and Allonge. If the mortgage provides for shared appreciation, the lender must use the Shared Appreciation Rider (Appendix 11) and the Shared Appreciation Allonge (Appendix 12).

E.Condominium or Planned Unit Development (PUD). If the mortgage to be insured is on a condominium or a [Prev Hit][Next Hit]home in a PUD, the appropriate mortgage rider must be used (Appendices 9 and 10, respectively).

The lender is advised to seek counsel's opinions to assure that State law has been considered, and that any necessary changes to the model instruments are made. The model instruments may require modification to comply with State laws.

6-7BORROWERS LACKING LEGAL COMPETENCY. Power of attorney (durable or otherwise) may be used for closing documents. Any power of attorney must comply with State law and allow for the Note to be legally enforced in that jurisdiction (see Paragraph 4-6).

6-8LOAN CLOSING DATE. The Loan Closing Date for all HECMs is defined as the date on which the borrower SIGNS the Note. THIS DATE MUST APPEAR, AND BE IDENTIFIED, AS THE "LOAN CLOSING DATE" IN BLOCK I. ON PAGE 1 OF THE FORM HUD-1 SETTLEMENT STATEMENT.

A.Regulation Z (12 CFR 226.15) provides the borrower with a right of rescission for three business days after loan closing. Lenders are prohibited from charging interest on funds held available for the borrower during the three day rescission period. Interest must begin to accrue on the day after the disbursement is made.

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(6-8)

B. In order to ensure an accurate accounting of interest accrual, the DISBURSEMENT DATE (the date on which the lender relinquishes control of the funds) MUST ALSO APPEAR, AND BE IDENTIFIED AS, THE "DISBURSEMENT DATE" IN BLOCK I. ON PAGE 1 OF THE FORM HUD-1 SETTLEMENT STATEMENT.

For example, if (1) the borrower signs the Note on August 5, 1993, (2) the rescission period expires on August 9, 1993, (3) disbursement of funds takes place on August 10, 1993, and (4) interest begins to accrue on August 11, 1993, the following information should appear in BLOCK I. of the FORM HUD-1 for ALL HECM LOANS:

I. SETTLEMENT DATE:

LOAN CLOSING DATE	AUGUST 5, 1993
DISBURSEMENT DATE	AUGUST 10, 1993

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(6-8)

C. Since lenders must use the appropriate indices in effect on the date of loan closing when setting the mortgage interest rate and the expected average mortgage interest rate for adjustable rate HECM loans, lenders originating HECMs in escrow closing states must arrange to have the borrower sign the Note while the same interest rates are in effect as when the mortgage documents are drawn.

D. Weekly average yields are published in the Federal Reserve Bulletin and are made available by the Federal Reserve Board in Statistical Release H.15(519). This Release is published weekly on Monday, or on Tuesday if Monday is a Federal holiday, and the index shown on that release is effective the day it is issued until the H.15(519) is issued the next week. Statistical Release H.15(519) is often not released until mid- or late-afternoon on Monday. Consequently, lenders closing HECM loans on Monday should use the index from the Statistical Release issued the previous Monday (one week earlier), and lenders closing HECM loans on Tuesday should use the index from the Statistical Release issued the day before closing.

E. For purposes of MIP remittance (see Chapter 7) to Computer Data Systems, Inc. (CDSI), lenders must use the "LOAN CLOSING DATE" from BLOCK I. of the FORM HUD-1 to complete the CDSI "CLOSE DATE" field, and must continue to use the "DISBURSEMENT DATE" in the

CDSI "FUND DATE" field on the LOAN SET-UP screen.

6-9REQUIREMENTS FOR CLOSING. At or before closing, the following must be accomplished:

A.During the application process, in order to provide the borrower with an estimate of his or her principal limit and to allow the local HUD office to verify that the correct indices are being used, the lender should use the indices in effect at the time the application is signed. The lender MUST recalculate the principal limit at closing using the indices in effect on the day of closing.

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B.On the day of closing, the lender must determine the principal limit, expected rate, mortgage interest (accrual) rate, and the margin (if applicable). The expected rate is needed to calculate the principal limit and payment plan for all borrowers, and is also the accrual rate for fixed rate HECMs. The mortgage interest rate is needed to calculate the first year accrual rate for adjustable rate HECMs. The lender MUST use the indices in effect on the date of closing.

For adjustable rate mortgages, HUD does not require that the lender round either the expected rate or the ARM note rate. Therefore, the lender may round both rates, only one rate, or none of the rates. However if the lender chooses to round either rate, the rate must be rounded to the nearest one-eighth (1/8) of a percentage point (i.e. the nearest 1/8th either up or down) and must be rounded throughout the life of the loan. Whether or not a lender decides to round the rates may depend on the preference of the secondary market investor. Lenders should check with their investors to determine if rounding will be required. If the mortgage interest rate is rounded, the lender should refer to the footnotes of Appendices 3 and 6 for instructions on appropriate changes to the First and Second Adjustable Rate Notes.

C.The ten-year Treasury rate is the index which must be used to establish the expected rate, and the one-year Treasury rate is the index which must be used to establish the mortgage interest (accrual) rate for adjustable rate HECMs. Both indices are published in the Federal Reserve Bulletin and are made available by the Federal Reserve Board in Statistical Release H.15(519). This is a national index, which can be obtained from the Federal Reserve Board, by requesting to be placed on the mailing list for receipt of the weekly H.15 publication. The address is:

Publications Services
Mail Stop 138
Board of Governors
Federal Reserve System
Washington, DC 20551

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(6-9)

D.If the mortgage interest rate (or the index for ARMs) has increased by more than one percent or the margin has increased at all since the Firm Commitment was issued, the commitment must be reprocessed before the loan can close. The lender is also required to provide the borrower with a new ARM Disclosure Statement indicating the new rate.

E.On ARMs, the lender must use the one-year Treasury rate (to establish the initial mortgage interest rate) and the ten-year Treasury rate (to establish the expected rate) from the same day.

F.The borrower must choose his or her initial payment plan, which identifies the method by which he or she wishes to receive the mortgage proceeds.

1)The lender should encourage the borrower to establish a line of credit along with monthly payments, if he or she has not done so, to avoid incurring unnecessary costs and inconvenience when unexpected expenses occur.

2)At closing, the borrower will receive the payment plan (Appendix 13) that he or she has selected.

3)The borrower must sign the plan, indicating that he or she has chosen the options contained on the plan.

4)Whenever the borrower changes a payment option or has his or her payments recalculated, the borrower will receive a payment plan, and will be required to sign the plan.

G.The lender must prepare the HUD-1 Settlement Statement (or other similar statement approved by HUD) at least one business day before closing. The borrower must be allowed to inspect the statement one business day before closing. As part of HUD's ongoing effort to strengthen quality control procedures, HECM lenders are required to obtain certifications to the HUD-1 Settlement Statement from the borrower(s) and settlement agent. The borrower(s) and settlement agent in a HECM transaction must sign the applicable certifications below, which must be printed at the bottom of the HUD-1, or attached to the HUD-1 as an addendum:

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I have carefully reviewed the HUD-1 Settlement Statement, and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or

by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower(s)

Date

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received, and have been or will be disbursed, by the undersigned as part of the settlement of this transaction.

Settlement Agent

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S. Code Section 1001 and Section 1010.

6-10 POST-CLOSING RESPONSIBILITIES. After closing, the lender must:

A.Record the first and second mortgages.

1)The lender is responsible for ensuring that the first and second mortgages are the first and second liens of record, and that other liens do not intervene between the first and second mortgage.

2)The second mortgage is not subject to any State or local recording taxes, or stamp taxes, because the second mortgage is a mortgage to the Federal Government. Taxation of the property of the Federal government violates the supremacy clause of the U.S. Constitution.

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(6-10A.)

However, fees are distinguished from taxes. Recording fees, which are a charge for a service, may be imposed by the local recording office. Customary and reasonable fees to record the second mortgage may be collected from the borrower by the mortgagee.

B.Submit the original second mortgage, along with any riders, to the local HUD office after recording. The lender should submit the original second mortgage to HUD with the closing package if recording has been completed by that time. Otherwise, the lender should submit the document to HUD immediately after recording. If local recording office will be submitting the second mortgage, they should be fully instructed with respect to the correct address for the appropriate local HUD office to which the second mortgage should be sent.

6-11REQUIRED DOCUMENTS FOR ENDORSEMENT. The following documents must

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be submitted by the lender to the local HUD Office for endorsement:

A.Mortgagee's Certification. To facilitate endorsement, the lender must certify that the mortgage has been closed in accordance with all HUD requirements. The following closing certification must be executed (signature, title, and date) by an officer or authorized signatory of the company:

"We (name of company), Mortgagee at the time of closing of this mortgage loan, certify that we have reviewed the outstanding commitments, legal instruments, closing statements and other documents of mortgage loan closing. Our review indicates that the mortgage loan has been closed in accordance with the statutory and regulatory requirements of the National Housing Act and HUD and that the terms of the outstanding commitments have been satisfied to the best of our knowledge and belief"

B.Certified true copy of the signed first mortgage and first note. The lender must ensure the accuracy of the information on the instruments and that they were completed as prescribed by Appendices 1, and 2 or 3, along with appropriate allonges and riders.

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(6-11)

C.Original or certified true copy of the signed second mortgage and original second note to be held by HUD. The lender must ensure the accuracy of the information on the instruments and that they were completed as prescribed by Appendices 4, and 5 or 6, along with appropriate allonges and riders.

D.Original Loan Agreements. Three original Loan Agreements (Appendix 7) signed by the borrower and the lender must be included. The authority to sign the Loan Agreement has been delegated to the Director of the Single Family Housing Division of a local HUD office. They may, in turn, re-delegate this authority to subordinate employees of the Department.

E.Copy of the Borrower's Initial Payment Plan. The lender must submit a copy of the borrower's initial payment plan signed by the borrower (Appendix 13).

F.MIP Statement of Account (SOA). The lender must submit the SOA to confirm payment of the MIP.

G.HUD-1 Settlement Statement. A HUD-1 Settlement Statement, or other similar statement approved by HUD, and the Addendum to the HUD-1 containing borrower and settlement agent certifications must be completed at closing, and copies of these documents must be submitted. For appropriate HUD-1 Settlement Statement and closing certifications, see Paragraph 69G. above.

H.Evidence of Hazard Insurance Policy. The lender must provide evidence of a hazard insurance policy equal to the value of

insurable property improvements at closing, obtained by either the borrower or the lender.

I. Title Insurance Policy. The lender must provide evidence of a title insurance policy at least equal to the maximum claim amount. The title insurance policy must show that:

1) The borrower owns the property in fee simple or on a leasehold under a renewable lease for not less than 99 years or under a lease having 50 years beyond the youngest borrower's 100th birthday, and

2) That the mortgage will be a first lien of record when recorded.

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(6-11I.)

Many State laws require that a maximum mortgage amount be stated in the mortgage or deed of trust, and consequently the amount recorded will be equal to 150% of the maximum claim amount, rather than the property value or the maximum mortgage amount under Section 203(b) of the National Housing Act. Notwithstanding this larger amount for the purpose of recordation, the title insurance policy obtained should be equal to the maximum claim amount, NOT 150% of that amount.

In order to avoid incurring unnecessary expenses, lenders must review borrower eligibility requirements (age, Federal credit record, principal residence) before ordering a title insurance commitment to be paid for by the borrower.

J. Choice of Insurance Options. The mortgagee should indicate in writing its choice of the assignment or shared premium insurance options.

K. Copy of the Notice of the Right of Rescission. This notice must be given to the borrower at closing according to Regulation Z requirements (12 CFR 226.15). This notice informs the borrower of his or her right to rescind the contract within three (3) days of loan closing. The notice must be signed and dated by the borrower to indicate receipt date.

M. Proof of Compliance with Conditions on Firm or Conditional Commitments. The lender must submit proof that the borrower has satisfied any conditions which were placed on his or her approval, including proof of payment of any delinquent Federal debts.

6-12 REVIEW OF THE CLOSING DOCUMENTS. HUD review of the closing package will comprise the following:

A. Lender's Certification. Verify that the lender's certification meets the requirements as stated in Paragraph 6-11A., above.

B. Certified true copy of the signed first mortgage and first note.

1) Verify that the information on the instruments is accurate and that they include the uniform covenants prescribed by Appendices 1, and 2 or 3.

6-13

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(6-12B.)

2) Verify that the mortgage interest rate is no more than one point higher than the rate disclosed for processing the Firm Commitment (increases of more than one point require reprocessing of the commitment) and that the margin has not increased at all since the Firm Commitment was issued (any increases require reprocessing of the commitment).

3) Verify that appropriate riders and allonges have been included.

C. Original or certified true copy of the signed second mortgage and original second note to be held by HUD. Verify that information in the instruments is accurate and that they were completed in the manner prescribed by Appendices 4 and, 5 or 6. The same riders and allonges accompanying the first mortgage and note must also be included.

D. Original Loan Agreements. Ensure that three Loan Agreements are completed and that they adhere to the sample format in Appendix 7.

E. Copy of the Borrower's Initial Payment Plan.

1) The Mortgage Credit Examiner should review the plan using the HECM software to ensure that the payments were calculated correctly, and that the borrower signed the plan.

2) The examiner must ensure that the expected rate is either equal to the mortgage interest rate (for a fixed rate mortgage) or equal to the ten year Treasury rate plus the margin (if applicable). For an ARM, the examiner must ensure that the one-year Treasury rate and the ten-year Treasury rate were released on the same day, and that the loan closing took place while those rates were in effect.

F. Initial MIP Statement of Account. Verify payment of the initial MIP by the Statement of Account submitted by the lender.

G. HUD-1 Settlement Statement. Review the HUD-1, or other similar statement approved by HUD, to ensure that all charges are allowable.

6-14

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(6-12)

H.Evidence of Hazard Insurance Policy. Verify evidence of a hazard insurance policy equal to the value of insurable property improvements.

I.Evidence of Title Insurance Policy. Verify evidence of a title insurance policy at least equal to the maximum claim amount. The title insurance policy must show that the borrower owns the property in fee simple or on a leasehold as described in Paragraph 6-11I., and that the mortgage will be a first lien of record when recorded.

J.Choice of Insurance Options. The lender must select the assignment or shared premium insurance options.

K.Copy of the Notice of the Right of Rescission. Verify evidence of the borrower's receipt of this notice at closing, as required by Regulation Z (12 CFR 226.15). The notice must give the borrower three (3) days to rescind on the contract and must be included. The notice must be signed and dated by the borrower to indicate receipt date.

M.Proof of Compliance with Conditions on Firm and Conditional Commitments. Verify that the borrower has complied with any conditions on his or her approval, including proof of payment of any delinquent Federal debts.

6-13THIRD-PARTY FEES. In addition to the following list of fees and charges, the local HUD Office may authorize or reject any other charge, or the amount of any charge, based on what is reasonable and customary in the area.

A.Appraisal Fee and Inspection Fee. The borrower may pay HUD's established maximum fee, or the actual cost of the service, whichever is less.

B.Credit Report. The borrower may pay the actual cost for a merged in-file report, containing the information currently available from three consumer credit information repositories.

C.Deposit Verification Charge. The borrower may pay the actual charge imposed by the depository institution.

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(6-13)

D.Document Preparation Fee. The borrower may pay a document preparation fee if this service is performed by a third-party who is not controlled by the mortgagee. The mortgagee may not charge a fee if it performs this service itself.

E.Property Survey. The borrower may pay if a survey is required by the lender, although a survey is not required by HUD.

F.Title Examination and Title Insurance Policy. A title insurance policy equal to the maximum claim amount must be submitted in the

closing package, and the borrower may pay for these items.

G.Attorney's Fees. The borrower may pay only if the attorney is not an employee of the mortgagee, or is not an attorney who routinely receives referrals from a particular mortgagee AND issues the title insurance. If an attorney who is not an employee of the mortgagee is routinely used on referral from the mortgagee to close loans and issue title insurance, the borrower may only be charged a notary fee.

H.Settlement Fees. The borrower may pay only if the closing agent is not an employee of the mortgagee. A fee may be charged if the settlement agent is an independent company or a subsidiary of the mortgagee that regularly closes loans for several different mortgagees.

I.Mortgage Broker's Fees. The borrower may pay only if the broker is engaged independently by the mortgagor. A broker's fee is prohibited if there is any financial interest between the broker and the mortgagee. The broker agreement must be submitted with the mortgage insurance application.

J.Tax Service Fee. The borrower may NOT pay a tax service fee in order for the mortgage loan servicer to check the tax rolls in each county where loans are recorded.

K.Recording Fees and Taxes. The borrower may pay recording fees on the first and second mortgages that are customary or required in the area, and recording taxes on the first mortgage that are required. The second mortgage is not subject to any State or local recording taxes, or stamp taxes, because the second mortgage is a mortgage to the Federal government.

6-16

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(6-13)

L.Tests or Treatments. The borrower may pay for tests or treatments required by HUD such as tests of water supplies, soil percolation tests for individual septic systems, or testing for or treating insect infestation.

M.Courier Fees. The borrower may pay a courier fee for delivery of a mortgage payoff to a lien holder and for closing documents to and from the settlement agent. If this arrangement will take place, a written agreement between the borrower and the lender must be executed before loan closing.

6-14ENDORSEMENT. The local HUD Office should issue a HUD Form 59100, Mortgage Insurance Certificate (MIC), on CHUMS after determining the acceptability of the closing submission by the lender.

A.Loans submitted for endorsement will be entered into CHUMS using the Endorsement Processing Screen.

B.The local HUD Office will verify the presence of the necessary documents listed in Paragraph 6-11.

C. Besides borrower and property information, the MIC will contain information on the ADP code, amortization plan (fixed or ARM), program I.D., borrower type, living units, interest rate, margin, cap (2/5 or lifetime), endorsement date and maximum claim amount.

6-15NON-ENDORSEMENT. If the local HUD Office determines that endorsement is not possible and that the impediments to endorsement cannot be corrected, the local HUD Office must return the original Loan Agreements to the borrower and the lender. The lender must inform the borrower that HUD cannot legally assume any responsibility for ensuring that the lender makes the payments required by the loan agreement.

6-16POST-ENDORSEMENT RESPONSIBILITIES. After endorsement, the local HUD Office must:

A. Sign the Loan Agreements (see Paragraph 6-12D.) and send one original to the lender, one original to the borrower, and retain one original.

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(6-16)

B. Send a signed Notice to the Borrower (Appendix 14) to the borrower, which explains the procedures to follow if the mortgagee fails to make the required payments to the borrower.

C. Ensure that the lender has submitted the original second mortgage and riders after closing, and retain the original second mortgage, note and any riders and allonges. The Loan Management Branch of the local HUD Office will be responsible for retaining these documents.

6-17 MAINTENANCE OF THE CASE BINDER.

A. During the insurance demonstration. After endorsement, the local HUD Office should transfer the case binder via pouch mail to Headquarters at the following address:

U.S. Department of Housing and Urban Development
Office of Economic Affairs
Room 8218
451 Seventh Street, S.W.
Washington, D.C. 20410

B. Following the insurance demonstration. As soon as possible after insurance endorsement, the local HUD Office will box and ship the insured case binders to Headquarters in accordance with the instructions in Chapter 3 of HUD Handbook 2226.1.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

June 23, 2004

MORTGAGEE LETTER 2004-25

**TO: ALL APPROVED MORTGAGEES
ALL HUD-APPROVED HOUSING COUNSELING AGENCIES**

**SUBJECT: Home Equity Conversion Mortgage (HECM) Program -- Clarification of
HECM Counseling Requirements**

The purpose of this Mortgagee Letter is to clarify the housing counseling requirements of the HECM program. Specifically, this Mortgagee Letter addresses:

- a) When a potential mortgagor must be referred for counseling;
- b) The acceptable listing of entities eligible to provide HECM counseling to which a client must be referred;
- c) The topics that must be covered in a counseling session;
- d) The types of counseling that are permissible;
- e) Acceptable means of documenting that a potential HECM borrower has received counseling;
- f) The counselor's responsibility for referring potential mortgagors to Federal Housing Administration (FHA)-approved HECM lenders; and
- g) How to notify the Department of Housing and Urban Development of concerns regarding the services of a HECM lender or HECM counselor.

All of the policies covered by this Mortgagee Letter are included in various policy documents, including Section 255 of the National Housing Act, 24 CFR 206.41, Mortgagee Letters 00-10 and 00-39, and Handbook 4235.1, REV 1. This Mortgagee Letter clarifies and consolidates the FHA's requirements. Given that some mortgagees and counseling agencies were confused about FHA's requirements and were not complying with the policies stated in this Mortgagee Letter, FHA will provide mortgagees and counseling agencies time to bring their operations into compliance. Therefore, all of the policies stated in this Mortgagee Letter take effect 30 days after the publication date.

Initial Contact between Mortgagor and Mortgagee

When a potential HECM mortgagor first contacts or communicates with an FHA-approved mortgagee, the mortgagee must explain that the HECM program requires counseling and refer the

client to a list of entities eligible to provide HECM counseling. To satisfy this requirement, the lender must provide the potential HECM borrower with information on the American Association of Retired Persons (AARP) Foundation HECM Counseling network and a list of all HUD-approved housing counseling agencies that offer HECM counseling within the state in which the potential borrower lives. The mortgagee may also provide the client the phone number for Fannie Mae's telephone counseling service. See below for more details on these eligible counseling entities.

The lender may not steer, direct, recommend, or otherwise encourage a client to seek the services of any one particular counseling agency, but must provide the entire listing of agencies located within the state in which the borrower resides, as described above. Further, before, during, or after the counseling session is completed, the lender may not contact a counselor or counseling agency to refer a client; discuss a client's personal information, including the timing or scheduling of the counseling; or request information regarding the topics covered in a counseling session.

Mortgagee Activities Allowed Prior to Counseling

HUD recommends and urges mortgagees to refer clients to counseling prior to taking initial application. However, if a mortgagee decides to discuss the program with a potential mortgagor and/or take initial application prior to counseling, the mortgagee may only undertake the following permissible activities: a) explain the HECM program to the potential client; b) discuss whether the potential borrower is eligible; c) provide information regarding the fees and charges associated with the HECM product; d) describe the potential financial implications of a HECM loan for the client; and e) provide the borrower with copies of the mortgage, note, and Loan Agreement. The potential HECM borrower is not obligated to pursue a HECM loan from a lender who takes initial application or discusses the HECM program with the potential mortgagor before the potential mortgagor completes the counseling.

Mortgagee Activities Prohibited Prior to Counseling

The mortgagee may not order an appraisal, title search, or an FHA case number or in any other way begin the process of originating a HECM loan before the potential mortgagor completes the required counseling. The mortgagee may only proceed to process the initial HECM loan application once the counseling is complete, as evidenced by the signed and dated counseling certificate (described below).

Fees and Charges

Until the mortgagee receives the required HECM counseling certificate indicating the counseling has been completed, the mortgagee may not charge the borrower an application fee, an appraisal fee, or charge for any other HECM-related services.

Entities Eligible to Provide HECM Counseling

Entities providing HECM counseling must be separate from HECM lending institutions. The only entities eligible to provide HECM counseling are: the AARP Foundation Network HECM Counselors; housing counseling agencies that are approved by HUD, including affiliates of HUD-

approved national and regional housing counseling intermediaries; state Housing Finance Agencies that receive grant funding from HUD to offer HECM counseling services; and the Fannie Mae Telephone HECM Counseling Service.

AARP Foundation Network Counselors – In response to a 1999 Congressional mandate, HUD worked with the AARP Foundation to develop a national network of expert HECM counselors. Counselors providing services through the AARP Foundation network must pass a rigorous exam and receive continuing education on the HECM program. The AARP Foundation counselors work at HUD-approved housing counseling agencies and provide both face-to-face counseling and telephone counseling services. HUD has established no conditions or requirements that limit the number or type of clients that may receive HECM counseling through the AARP Foundation network. HUD encourages lenders to inform all potential HECM borrowers that any client seeking HECM counseling may receive counseling services from an AARP Foundation counselor. The phone number for the AARP Foundation counseling service is 202-434-6082 (not a toll free number). Consumers can also obtain a listing of reverse mortgage counselors in the AARP Foundation network on the web at: <http://www.hecmresources.org/network.cfm>

HUD-Approved Housing Counseling Agencies – The list of HUD-approved housing counseling agencies (including affiliates of HUD-approved national and regional intermediaries) and state housing finance agencies that provide HECM counseling services is available on HUD's website. This listing arrays agencies in alphabetical order by state, then by city. Lenders, as well as the general public, may obtain a copy of the most recent listing of the HECM housing counseling agency directory at: <http://www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm>.

Fannie Mae Telephone HECM Counseling – Fannie Mae has an agreement with HUD to provide telephone counseling services to potential HECM borrowers under a very limited set of circumstances. See the Telephone Counseling section of this mortgagee letter for the criteria that must be met for a client to receive telephone counseling from Fannie Mae.

Topics to be Covered

Financial Implications of and Alternatives to a HECM

In accordance with the HECM statute and regulations, the following information must be provided to the potential HECM borrower:

- a) options, other than a HECM, that are available to the homeowners, including other housing, social service, health, and financial options;
- b) other home equity conversion options that are or may become available to the homeowner, such as other reverse mortgage products, sale-leaseback financing, deferred payment loans, and property tax deferral;
- c) the financial implications of entering into a HECM;

- d) a disclosure that a home equity conversion mortgage may have tax consequences, affect eligibility for assistance under federal and state programs, and have an impact on the estate and heirs of the homeowners; and whether the potential HECM mortgagor has signed a contract or agreement with an estate planning firm that requires, or purports to require, the mortgagor to pay a fee on or after closing that may exceed amounts permitted by the Secretary under 24 CFR part 206 and the extent to which these services may not be needed or may be available at nominal or no cost from other sources, including the mortgagee (24 CFR 206.41(b)).

In providing information on the financial implications of entering into a HECM, a counselor must cover, at a minimum: a) the advantages and disadvantages of each payment plan; b) the steps followed in determining the borrower's principal limit, including all loan costs and set-asides; c) the increase in the loan balance and likely decrease in the borrower's equity over time; d) the growth of the HECM line of credit; and e) the borrower's ongoing responsibility to pay property taxes, ground rents, and insurance either directly or indirectly by electing to require the mortgagee to withhold funds from monthly payments or to charge such funds to a line of credit.

HECM Calculation Software

In providing this information, a counselor should use computer printouts generated by HUD's software, or similar software generating the same information, for calculating the maximum funds available to HECM borrower(s) and payment plan options. The HUD HECM software was recently updated and the most recent version must be used. For agencies that have never installed the HECM software, it can be downloaded from:
<http://www.hud.gov/offices/hsg/sfh/hecm/hecminst.cfm>,

For agencies already using the software, the upgrade can be downloaded from:
http://www.hud.gov/pub/chums/hecm_upgrade.html.

Costs to Obtain a HECM

Finally, counselors must explain for all HECM clients: what costs are required to obtain a HECM loan; the maximum amount HUD permits a mortgagee to charge for specific loan costs; which loan costs are the same for every lender and which costs may vary from lender to lender.

Prohibition on Dissemination of Specific Loan Product Information

A counselor must never provide information on the specific prices charged by any individual lender, because prices are subject to market fluctuations and may depend on variables that are not constant from client to client. The counselor should tell the client that information on prices must come from a loan officer. If a client presents a counselor with detailed information on a variety of loans offered by multiple lenders, the counselor may help the client compare the costs by pointing out the features described above (i.e., what costs are required, what HUD permits, what costs may vary and which may not).

Counseling Certificate

All parties shown on the property deed must receive counseling in order to obtain a HECM loan. For borrowers lacking legal competency, the counseling session may be conducted with a person holding a durable power of attorney, or with a court-appointed conservator or guardian (as specified in Handbook 4235.1, REV-1, paragraph 4-6). When the counseling session is successfully completed, the counseling agency will issue a certificate stating that counseling was provided. All owners shown on the property deed are eligible mortgagors and each of them (or legal representative, as described above) must sign the counseling certificate.

In the event that multiple parties shown on the deed are not located in the same place, counseling may be provided to these parties by one counseling agency via teleconference call or the individuals may receive counseling separately from distinct counseling agencies. So long as one party participating in the counseling resides in the state where the counseling agency conducting the telephone counseling is located, the counseling agency may offer this service across state boundaries. If the potential HECM mortgagors choose to receive counseling from separate counseling agencies, each of the parties would sign a separate HECM counseling certificate.

The certificate must contain the name of the counselor, the name of the counseling agency, and the Employer Identification Number (EIN) of the counseling agency. In addition, the certificate must be signed and dated by both the counselor and all potential mortgagors, indicating the counseling has been completed. The counselor must also provide the actual expiration date for the certificate. The certificate will expire 180 calendar days from the date the counseling was completed.

A sample certificate is attached for your convenience. This sample certificate replaces the sample previously provided by FHA in Handbook 4235.1, REV-1, Appendix 16. Consistent with the other provisions of this mortgagee letter, the new certificate must be used for all prospective HECM mortgagors referred for counseling 30 days after the mortgagee letter is published.

Mortgagee Responsibilities Regarding Counseling Certificate

The mortgagee must take initial application from a prospective mortgagor before the counseling certificate expires, but it is not necessary for a loan to close before the certificate expires. FHA prohibits the mortgagee and/or the potential mortgagor from waiving the certificate expiration date.

The mortgagee must verify that the housing counseling entity listed on the certificate is an entity that HUD has deemed eligible to provide HECM counseling. To do so, the mortgagee may check the name of the counseling agency identified on the certificate against the HUD's listing of eligible HECM counseling entities, provided on HUD's website.

As mentioned above, a mortgagee may not order an appraisal or request an FHA case number until the potential borrower completes the required counseling and presents the lender with the counseling certificate.

Permissible Types of Counseling

Face-to-Face Counseling

HUD expects potential HECM borrowers to meet face-to-face with a counselor to discuss their unique financial circumstances and decide what housing options are best for them. Face-to-face counseling enables the counselor to assess whether the homeowner understands the features of the HECM program and the financial implications of a HECM on his/her household.

Telephone Counseling

Should telephone counseling be necessary, the AARP Foundation Network of HECM counselors is the only entity permitted by HUD to provide telephone counseling with no special conditions or limitations. As mentioned above, AARP Foundation counselors work at HUD-approved housing counseling agencies and provide both face-to-face counseling and telephone counseling services. HUD has established no conditions or requirements that limit the circumstances under which a client may receive HECM counseling through the AARP Foundation network. In other words, any client, located anywhere in the country and under any circumstances, may receive telephone counseling from an AARP Foundation counselor.

Local housing counseling agencies (including affiliates of national and regional intermediaries) may provide telephone counseling only under a limited set of circumstances and only to clients residing in the state where the agency is approved to operate. Only under the following circumstances may a local housing counseling agency whose counselors are not part of the AARP Foundation network offer telephone counseling: the potential borrower has a mobility problem or medical condition that will affect his or her ability to travel to the local counseling agency or no counseling agency is located within 50 miles of the borrower's home. HUD encourages local agencies to refer clients in need of telephone counseling to the AARP Foundation Network of expert HECM counselors. If a local agency receives a telephone inquiry from a caller who resides in a state that is different from that where the agency is located, the agency must refer that caller to the AARP Foundation counselors or to an agency in the caller's state, which can be obtained by looking at the listing of agencies on HUD's web site.

Fannie Mae has an agreement with HUD to provide telephone counseling services to potential HECM borrowers, if any one of the following circumstances apply:

- a) There is no HUD-approved counseling agency within 50 miles of the potential HECM borrower's home;
- b) The local counseling agencies do not provide reverse mortgage counseling in the potential mortgagor's language;
- c) There is a waiting period of three or more weeks for a reverse mortgage counseling appointment;
- d) The potential HECM mortgagor is unable or unwilling to travel and the local agency does not make home visits; or
- e) The potential HECM mortgagor is experiencing an emergency such as foreclosure of

his/her present home and no counseling is immediately available in the local area.

Fannie Mae's toll-free counseling service can be reached at 800-732-6643, weekdays, from 9:00 am to 5:00 pm, Eastern Standard Time.

Exceptions to HECM Counseling Requirement

In accordance with the provisions of 24 CFR Part 206.53, HUD may waive the HECM counseling requirement for HECM mortgagors who are refinancing into a new HECM mortgage and choose not to receive counseling, only if the following conditions are met: a) the HECM mortgagor received the anti-churning disclosure form required by law; b) the increase in the mortgagor's principal limit exceeds the total cost of the refinancing by 5 times; and c) the timing between the closing on the original HECM loan and the date of the application for refinancing does not exceed five years. See Mortgagee Letter 04-18 for more details on this subject.

Lender Steering

Housing counseling agencies are not permitted to promote, represent, recommend, or speak for any specific lender. Potential borrowers seeking assistance in locating a lender may be referred to HUD's listing of approved HECM lenders located at: <http://www.hud.gov/l/code/llplcrit.html>.

Concerns or Complaints Regarding a HECM Lender or HECM Counselor

If a consumer, lender, counselor, or representative from the housing industry has a concern or complaint about the services provided by a particular HECM lender or HECM counselor, they should immediately contact the homeownership center in their jurisdiction. Toll-free contact numbers for the Homeownership Centers are: Philadelphia (800) 440-8647; Atlanta (888) 696-4687; Denver (800) 543-9378; and Santa Ana (888) 827-5605.

Information Collection Requirements

The information collection requirements referred to in this Mortgagee Letter have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The OMB number issued for this requirement is OMB 2502- 0546

If you have questions regarding this Mortgagee Letter, please contact your local Homeownership Center (HOC). The toll-free numbers for the four HOCs are listed above.

Sincerely,

John C. Weicher
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachment



[Click Here or type Alt-k to Download MS Word version of letter](#)

U. S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

March 8, 2000

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

MORTGAGEE LETTER 00-10

TO: ALL APPROVED MORTGAGEES

SUBJECT: Revisions to the Home Equity Conversion Mortgages
(HECMs) Program

The Department is continuing its efforts to both promote the HECM program and deliver this valuable product more efficiently to seniors. Recently, Congress converted the HECM program from a temporary program to a permanent one and also increased the number of HECM loans that FHA can insure to 150,000. Congress also increased the maximum mortgage amounts available under this program. This Mortgagee Letter implements a number of changes to the HECM program to increase its availability and further streamline the process for mortgage lenders. These changes are effective immediately.

o Increase in Loan Origination Fee --- Must Cover Mortgage
Broker or Loan Correspondent Fee

FHA permits a lender to charge a loan origination fee agreed upon by the borrower and lender. However, we are now capping the amount of the origination fee that can be charged the borrower and also permitting the borrower to finance the entire amount of the fee. The origination fee amount will now be limited to the greater of \$2000 or 2 percent of the maximum claim amount on the reverse mortgage.

The financed origination fee is now the full amount that the borrower can pay for the origination and underwriting of the mortgage and must also include the full amount of any mortgage broker fee or loan correspondent fee. The borrower is not permitted to pay any additional origination fees of any kind to a mortgage broker or loan correspondent. Lenders are reminded that a mortgage broker fee can be included as part of the origination fee only if the mortgage broker is engaged independently by the homeowner and that a mortgage broker's fee is prohibited if there is any financial interest between the mortgage broker and lender. A copy of the agreement between the borrower and the mortgage broker to pay the broker fee must be submitted along with the loan application and other documents in the binder submitted to FHA. Consequently, the Home Equity Conversion Mortgage Loan Agreement section 2.2.1 is amended to:

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- 2.2.1.** Loan Advances shall be used by Lender to pay, or reimburse Borrower for, closing costs listed in the Schedule of Closing Costs (Exhibit 2) attached to and made a part of this Loan Agreement, provided that Loan Advances will only be used to pay origination fees in an amount not exceeding the greater of

\$2,000 or 2 percent of the maximum claim amount, nor shall the Lender charge the Borrower an origination fee in excess of this amount.

o Counseling Certificates

In all circumstances the borrower must receive reverse mortgage counseling. The Certificate of HECM Counseling includes a 180-day expiration period. Provided the homeowner applies for a HECM within 180 days of signing the certificate, there is no need to obtain an updated certificate. Further, when the loan is being applied for by more than one homeowner, as long as at least one homeowner's signature on the certificate is within the 180-day expiration period, the lender may consider the counseling certificate as being valid for all borrowers on the loan. In addition, those borrowers that received the counseling more than 180 days previously but do not believe that a second session would be useful may also waive the expiration date in writing.

o HECM Counseling Provided by Fannie Mae

On October 15, 1999, Fannie Mae began providing telephone counseling for homeowners contemplating using FHA's HECM loans. This service will be offered under a one-year pilot. Fannie Mae will provide counseling under any of the following circumstances:

- o HUD-approved counseling is not available within 50 miles of the homeowner's residence, or
- o The HUD-approved counseling agency has a waiting period of three weeks or more before it can see the homeowner, or
- o The local agencies do not provide reverse counseling in the homeowner's native language, or
- o The homeowner is unable to travel and the local agencies do not make home visits, or
- o The local agency charges a fee for reverse mortgage counseling.

o Face-to-Face Interview Requirement

In Mortgagee Letter 98-15 (March 16, 1998), FHA eliminated the face-to-face interview requirement. Those rules, which affected forward mortgages insured by FHA, now also apply to reverse mortgages under the HECM program provided that the homeowner has at least had a face-to-face interview with a HUD-approved reverse mortgage counseling agency. In other words, a face-to-face interview with an acceptable counseling agency may substitute for a

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face-to-face interview with the mortgage lender. However, please note that the above telephone counseling provided by Fannie Mae cannot also substitute for the lender's face-to-face interview.

With or without a face-to-face interview, the lender remains completely accountable for positively identifying the applicant and assuring that the homeowner is eligible based on his or her age for the HECM loan.

o Revised Appraisal Disclosure Requirements

Mortgagee Letter 99-18 announced numerous changes to FHA's appraisal requirements. Please note, however, that the

"Importance of Home Inspections" form is not required to be provided on HECM loans.

If you have any questions regarding this mortgagee letter, please contact your Homeowner Centers in Atlanta (888-696-4687), Denver (800-543-9378), Philadelphia (800-440-8647) or Santa Ana (888-527-5605).

Sincerely,



William C. Apgar
Assistant Secretary for Housing-
Federal Housing Commissioner

Report Relative to Assembly Bill No. 292

Assembly Committee on Judiciary
September 23, 1970*The Honorable Bob Monagan*
Speaker of the Assembly

Re: Assembly Bill 292

Dear Mr. Speaker: Attached is a report on the above bill prepared by the undersigned in order to indicate more fully the intent of the Legislature with respect to this measure.

Respectfully submitted,

JAMES A. HAYES, Chairman
Assembly Judiciary Committee

The Consumers Legal Remedies Act is designed to provide affirmative remedies for consumers which will protect them from unscrupulous business practices while insulating responsible businessmen from spurious or vexatious lawsuits. This is done by providing the consumer a lawsuit for himself or on behalf of all other similarly situated consumers to rescind unfair business transactions, collect damages, and stop future bad practices.

Section 1770 of the Civil Code provides sixteen specific practices outlawed by the Act. By way of illustration and not limitation the following are examples of violations of each subdivision of Section 1770:

a. Selling a product *as being made by Y* when it is *really made by X*. Although passing off originally denominated unauthorized use of trade identification, today the term is also applied to covert substitution of a different brand of goods for the one requested by a customer. *Coca-Cola Co. v. Foods, Inc.*, 220 F. Supp 101.

b. There exists today no industry-wide, government or other accepted system of quality standards or grading of industry products. Within the industry, however, a variety of trade terminology has developed which, when used in conjunction with consumer transactions, has the tendency to suggest that a system of quality standards or grading does in fact exist. Typical of such terminology are the expressions "premium" "super" "supreme". The consumer, usually does not understand the significance of the absence of accepted or quality standards and is likely to assume that these expressions connote valid criteria. Since a consumer may misinterpret the meaning of such terminology, he may be deceived into buying a more inferior product because it has been given such designation.

This confusion as to commercial source, approval, endorsement, or certification of goods or services caused by trademarks, or collective marks likely to be associated with pre-existing trade symbols.

c. Representing that a product, such as tires, has the approval of Parnelli Jones, or that someone like Mario Andretti always uses brand X tire when he doesn't.

In *Vissir v. Macres*, Cal App 2 249 defendant opened up a competing florist shop with the same name as plaintiff's at plaintiff's former location after the latter had moved across the street.

d. Selling a camera as being made in Japan when it is really made in Taiwan. Or perfume concentrate imported from France and combined in the U.S. with domestic alcohol may not be sold as imported perfume. *Distributors, Inc. v. FTC*, 263 Fed 396.

e. This section would be violated by actually representing that there is an industry wide system of grading tires when there isn't, and actually representing that the tire being sold meets those standards. Actually representing that the tires are used or approved by Parnelli Jones or Mario Andretti would also be violations.

f. It would be a deceptive practice for a salesman to fail to disclose that products are reprocessed even though the reprocessed products are as good as new. *FTC v. Colgate Palmolive* 85 S. Ct. 1035.

g. A violation of this section would be an advertisement representing that bread sold under trademark "Lite Diet" was a low calorie food when in fact it contained same number of calories as other white bread but had thinner slices.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



- h. False assertions as to a product's inferiority.
- i. Advertising to sell a quality Y tire when you actually intend to sell a quality X tire, one of lesser quality.
- j. To lure consumers into a store, an advertisement will offer a product at a very low price, but the seller will intend to only sell one or two of the offered product. An appliance store will offer to sell a T.V. at \$100 less than its regular retail price, but will only offer one or two T.V. sets.
- k. This subsection applies to spurious "fire" and "liquidation" sales as well as to fictitious price cuts.
 - i.e., "Prices are slashed due to impending bankruptcy."
- l. In this case the subsection would be violated if the seller advertised "satisfaction or your money back" or "10-day free trial", as they are usually construed as a guaranty that the full purchase price will be refunded. Any conditions to the contrary should be set forth.

m. Self-explanatory.

Protect the innocent consumer from the unscrupulous practices of repairmen. Recommending that new brakes are needed, or that a new battery is needed when they are not.

n. A seller would be in violation of this subsection by selling a different product than the one advertised. The seller sells the regulation model rather than the luxury model advertised.

o. The consumer, in this instance, might be required to buy an additional product before he could receive the advertised discount, or that he buy a more expensive and high quality product than the one advertised.

p. The prime example of a violation of this subsection is the car salesman who negotiates a deal, but before the contract can be signed, he tells the consumer that he has to get approval. Of course, when he returns, he tells the consumer that 'his boss' won't let him sell the car at such a low price, so new adjustments must be made.

Since passage of the bill by the Legislature, representatives of business and the consumer have asked for specific statements of intention regarding two Sections of the Act.

Jurisdiction of the Superior Court: Assuming a case and controversy within the jurisdictional limitations of the Superior Court, Section 1760 is not intended to be construed to limit actions under the Act to municipal or justice courts. That is, an action may be commenced under the provisions of the Consumers Legal Remedies Act in the Superior Court.

Statute of Limitations: Section 1783 provides that no action may be commenced more than three years after the commission of the allegedly wrongful method, act or practice. The statute applies to individual and class actions. In order to be included within the class, the Legislature intended that each member of the class would have been injured by a violation of Section 1770 within three years of the commencement of the action. Thus, if A is damaged in 1965, and B.C.D.E.F. and G are injured in 1968, class action may be commenced in 1970[*] but A cannot be included within the class.

The Consumers Legal Remedies Act has charted a new course for protection of the consumer. There is no state or federal precedent for much of the substantive or procedural provisions of the measure. The Legislature therefore anticipates controversy and debate will attend application of the measure during the oncoming months. This in mind Section 1760 was included in the bill to give jurists and advocates an insight into the legislative intent underlying the Consumers Legal Remedies Act. Simply the Title should be construed liberally to promote the objective of efficient and economic consumer protection against unfair and deceptive business practices.

* This is an error. Section 1756 of the act provides the substantive and procedural provision of the act shall only apply to actions filed on or after January 1, 1971.